

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

EDIZONE, L.C.,

Plaintiff,

vs.

CLOUD NINE, et al.,

Defendants.

MEMORANDUM DECISION AND
ORDER ON PLAINTIFF'S MOTION
IN LIMINE REGARDING
MISCELLANEOUS EXHIBITS

Case No. 1:04-CV-117 TS

CLOUD NINE, et al.,

Counterclaim-Plaintiffs and
Third-Party Plaintiffs,

vs.

EDIZONE, L.C.,

Counterclaim-Defendant,

and

TERRY PEARCE, et al.,

Third-Party Defendants.

This matter comes before the Court on Plaintiff's Motion in Limine Regarding Miscellaneous Exhibits. Plaintiff seeks to preclude the admission of three exhibits which purport to be a Davidson Heal Cup,¹ Davidson Foot Pad,² and a Black Floor Mat³ (the product exhibits). Plaintiff also objects to Defendants' invalidity charts⁴ (the chart exhibits).

Federal Rule of Evidence 402 provides that "[e]vidence which is not relevant is not admissible." Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."⁵ Of course, "[t]he standard is not stringent; it is aimed at each 'brick' of evidence potentially making a wall and not every witness 'mak[ing] a home run.'"⁶

¹Plaintiff has identified this as Exhibit S3. The materials submitted by Defendants identify this as Exhibit CS.

²Plaintiff has identified this as Exhibit T3. The materials submitted by Defendants identify this as Exhibit CT.

³Plaintiff has identified this as Exhibit N4. The materials submitted by Defendants identify this as Exhibit DN.

⁴Plaintiff has identified the invalidity charts as Exhibits K4, L4, T4, and G7. The materials submitted by Defendants identify the invalidity charts as Exhibits DK, DL, DT, and GG.

⁵Fed.R.Evid. 401.

⁶*United States v. Yazzie*, 188 F.3d 1178, 1189 (10th Cir. 1999) (quoting Fed.R.Evid. 401 advisory committee's note).

Moreover, Federal Rule of Evidence 403 excludes otherwise relevant evidence, if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or delay, waste of time, or needless presentation of cumulative evidence.⁷

Plaintiff first objects to the product exhibits on the grounds of authenticity. The Court will deny this objection without prejudice in order to allow Defendants to attempt to show the authenticity of these exhibits at trial. Plaintiff retains the ability to make appropriate objections during trial.

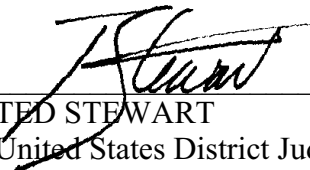
Turning to the chart exhibits, the Court agrees that the invalidity chart relating to the '450 Patent⁸ is irrelevant and will be excluded. As to the remaining invalidity charts, the Court will take the Motion under advisement and rule on the issues as they arise at trial.

It is therefore

ORDERED that Plaintiff's Motion in Limine Regarding Miscellaneous Exhibits (Docket No. 808) is GRANTED IN PART, DENIED IN PART, and TAKEN UNDER ADVISEMENT.

DATED May 22, 2008.

BY THE COURT:



TED STEWART
United States District Judge

⁷Fed.R.Evid. 403.

⁸Exhibit T4 or DT.